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Senate Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1305

AN ACT

AMENDING SECTIONS 23-392, 23-1411 AND 38-1101, ARIZONA REVISED STATUTES;
RELATING TO PROBATION AND SURVEILLANCE OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-392, Arizona Revised Statutes, is amended to
3 read:

4 23-392. Overtime compensation for certain law enforcement or
5 probation officer activities; option; definitions

6 A. Any person engaged in law enforcement OR PROBATION OFFICER
7 activities shall be compensated for each hour worked in excess of forty hours
8 in one work week at the option of such employer at the following rates:

9 1. One and one-half times the regular rate at which such person is
10 employed or one and one-half hours of compensatory time off for each hour
11 worked if by the person's job classification overtime compensation is
12 mandated by federal law.

13 2. If by the person's job classification federal law does not mandate
14 overtime compensation, the person shall receive the regular rate of pay or
15 compensatory leave on an hour for hour basis.

16 ~~E.~~ B. Paid leave may be considered hours worked for the purpose of
17 calculating overtime.

18 ~~D.~~ C. The director of the department of public safety may establish
19 alternate work periods, in accordance with federal law, for the purpose of
20 determining overtime compensation for those employees of the air rescue
21 section of the department of public safety.

22 ~~E.~~ D. Notwithstanding subsection ~~D~~ C of this section, an alternate
23 work period established by the director of the department of public safety
24 for the purpose of determining overtime compensation shall not exceed
25 twenty-eight days or ~~one hundred and~~ ONE HUNDRED sixty hours.

26 ~~B.~~ E. For the purposes of this section: ~~—~~^a

27 1. "Person engaged in law enforcement activities":

28 (a) Means:

29 (i) A law enforcement officer as defined by section 38-1001. ~~—~~

30 (ii) A peace officer as defined by section 41-1701. ~~—~~^{or}

31 (iii) Any security personnel responsible for controlling or
32 maintaining custody of inmates in correctional institutions maintained by ~~the~~
33 THIS state or a county, city or town.

34 (b) ~~The term "person engaged in law enforcement activities" shall~~ DOES
35 not include any such person employed in a bona fide executive or
36 administrative capacity as defined by the employer.

37 2. "PROBATION OFFICER" INCLUDES A PROBATION OFFICER OR SURVEILLANCE
38 OFFICER WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS
39 STATE.

40 Sec. 2. Section 23-1411, Arizona Revised Statutes, is amended to read:

41 23-1411. Public safety employee organizational rights;
42 definition

43 A. Public safety employees serving any city, town, county or fire
44 district in this state have the right to join employee associations which
45 comply with the laws of this state and have freedom to present proposals and
46 testimony to the governing body of any city, town, county or fire district

1 and their representatives. A person shall not be discharged, disciplined or
2 discriminated against because of the exercise of these rights.

3 B. This section shall not be construed to compel or prohibit in any
4 manner any employee wage and benefit negotiations.

5 C. FOR THE PURPOSES OF THIS SECTION, "PUBLIC SAFETY EMPLOYEE" INCLUDES
6 A PROBATION OFFICER OR SURVEILLANCE OFFICER WHO IS EMPLOYED BY THIS STATE OR
7 A POLITICAL SUBDIVISION OF THIS STATE.

8 Sec. 3. Section 38-1101, Arizona Revised Statutes, is amended to read:

9 38-1101. Law enforcement officers; probation officers; right to
10 representation; right to evidence on appeal; change
11 of hearing officer or administrative law judge;
12 definitions

13 A. If an employer interviews a law enforcement officer OR PROBATION
14 OFFICER and the employer reasonably believes that the interview could result
15 in dismissal, demotion or suspension, the law enforcement officer OR
16 PROBATION OFFICER may request to have a representative of the officer present
17 at no cost to the employer during the interview. The law enforcement officer
18 OR PROBATION OFFICER shall select a representative who is available on
19 reasonable notice so that the interview is not unreasonably delayed. The
20 representative shall participate in the interview only as an observer.
21 Unless agreed to by the employer, the representative shall be from the same
22 agency and shall not be an attorney. The law enforcement officer OR
23 PROBATION OFFICER shall be permitted reasonable breaks of limited duration
24 during any interview for telephonic or in person consultation with others,
25 including an attorney, who are immediately available.

26 B. Subsection A does not apply to an interview of a law enforcement
27 officer OR PROBATION OFFICER that is:

28 1. In the normal course of duty, counseling or instruction or an
29 informal verbal admonishment by, or other routine or unplanned contact with,
30 a supervisor or any other law enforcement officer OR PROBATION OFFICER.

31 2. Preliminary questioning to determine the scope of the allegations
32 or if an investigation is necessary.

33 3. Conducted in the course of a criminal investigation.

34 4. Conducted in the course of a polygraph examination.

35 C. In any appeal of a disciplinary action by a law enforcement officer
36 OR PROBATION OFFICER, the parties shall exchange copies of all relevant
37 documents and a list of all witnesses pursuant to the following time periods
38 and requirements:

39 1. Within three business days after the employer's receipt of a
40 written request from the law enforcement officer OR PROBATION OFFICER for a
41 copy of the investigative file that is accompanied by a copy of the filed
42 notice of appeal, the employer shall provide a complete copy of the
43 investigative file as well as the names and home or work mailing addresses of
44 all persons interviewed during the course of the investigation.

45 2. No later than five business days before the appeal hearing, the
46 employer and the law enforcement officer OR PROBATION OFFICER shall exchange

1 copies of any documents that may be introduced at the hearing and that have
2 not previously been disclosed.

3 3. No later than five business days before the appeal hearing, the
4 employer and the law enforcement officer OR PROBATION OFFICER shall exchange
5 the names of all witnesses who may be called to testify. A witness may be
6 interviewed at the discretion of the witness. The parties shall not
7 interfere with any decision of a witness regarding whether to be interviewed.

8 D. It is unlawful for a person to disseminate information that is
9 disclosed pursuant to subsection C to any person other than the parties to
10 the appeal and their lawful representatives for purposes of the appeal of the
11 disciplinary action. This subsection does not prohibit the use of the
12 information in the hearing or disclosure pursuant to title 39, chapter 1,
13 article 2.

14 E. The employer or the law enforcement officer OR PROBATION OFFICER
15 may seek a determination by the hearing officer, administrative law judge or
16 appeals board hearing the appeal regarding any evidence that the employer or
17 the law enforcement officer OR PROBATION OFFICER believes should not be
18 disclosed pursuant to subsection C because the risk of harm involved in
19 disclosure outweighs any usefulness of the disclosure in the hearing. In
20 determining whether evidence will be disclosed, the hearing officer,
21 administrative law judge or appeals board may perform an in camera review of
22 the evidence and may disclose the material subject to any restriction on the
23 disclosure, including the closing of the hearing or the sealing of the
24 records, that the hearing officer, administrative law judge or appeals board
25 finds necessary under the circumstances.

26 F. In any appeal of a disciplinary action by a law enforcement officer
27 OR PROBATION OFFICER in which a single hearing officer or administrative law
28 judge has been appointed to conduct the appeal hearing, the law enforcement
29 officer OR PROBATION OFFICER or the employer may request a change of hearing
30 officer or administrative law judge. In cases before the office of
31 administrative hearings, on the first request of a party, the request shall
32 be granted. All other requests, including any subsequent requests in cases
33 before the office of administrative hearings, may be granted only on a
34 showing that a fair and impartial hearing cannot be obtained due to the
35 prejudice of the assigned hearing officer or administrative law judge. The
36 supervisor or supervising body of the hearing officer or administrative law
37 judge shall decide whether a showing of prejudice has been made.

38 G. A party who violates subsection C or D, unless the violation is
39 harmless, shall not be permitted to use that evidence at the hearing, except
40 on a showing of good cause. The hearing officer or administrative law judge,
41 on a showing of good cause, may grant the opposing party a continuance,
42 otherwise limit the use of the evidence or make such other order as may be
43 appropriate.

44 H. This section does not preempt agreements that supplant, revise or
45 otherwise alter the provisions of this section, including preexisting
46 agreements between the employer and the law enforcement officer OR PROBATION

1 OFFICER or the law enforcement officer's OR PROBATION OFFICER'S lawful
2 representative association.

3 I. For the purposes of this section:

4 1. "Appeal" means a hearing before a state or local merit board, a
5 civil service board, an administrative law judge or a hearing officer.

6 2. "Disciplinary action" means the dismissal or demotion or the
7 suspension for more than forty hours of a law enforcement officer OR
8 PROBATION OFFICER that is authorized by statute, charter or ordinance and
9 that is subject to a hearing or other procedure by a local merit board, a
10 civil service board, an administrative law judge or a hearing officer.

11 3. "Investigative file" means the law enforcement agency's complete
12 report and any attachments detailing the incidents leading to the
13 disciplinary action.

14 4. "Law enforcement officer" means:

15 (a) An individual, other than a probationary employee, who is
16 certified by the Arizona peace officer standards and training board. ~~or who~~
17 ~~is~~

18 (b) A detention officer or correction officer ~~and~~ who is employed by
19 this state or a political subdivision of this state other than a multi-county
20 water conservation district.

21 5. "PROBATION OFFICER" MEANS A PROBATION OFFICER OR SURVEILLANCE
22 OFFICER WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS
23 STATE.